



The State of New Hampshire
Department of Environmental Services



Michael P. Nolin
Commissioner

Robbie D. Wood, Inc.
P.O. Box 125
Dolomite, AL 35061

**NOTICE OF PROPOSED
ADMINISTRATIVE FINE
AND HEARING
No. AF 04-026**

April 16, 2004

I. INTRODUCTION

This Notice of Proposed Administrative Fine and Hearing is issued by the Department of Environmental Services, Waste Management Division ("the Division") to Robbie D. Wood, Inc. ("Wood") pursuant to RSA 147-a:17-a and Env-C 601.05. The Division is proposing that a fine of \$2,000 be imposed against Wood for the violation alleged below. **This notice contains important procedural information. Please read the entire notice carefully.**

II. PARTIES

1. The Department of Environmental Services, Waste Management Division, is an administrative agency of the State of New Hampshire, having its principal office at 29 Hazen Drive, Concord, NH.
2. Robbie D. Wood, Inc. is an Alabama corporation having a mailing address of P.O. Box 125, Dolomite, AL 35061.

III. SUMMARY OF FACTS AND LAW SUPPORTING CLAIMS

1. Pursuant to RSA 147-A, Department of Environmental Services ("DES") regulates the management and disposal of hazardous waste. Pursuant to RSA 147-A:3, the Commissioner of DES has adopted Env-Wm 100 – 1100 ("Hazardous Waste Rules") to implement this program.
2. Pursuant to RSA 147-A:17-a, the Commissioner is authorized to impose fines of up to \$2,000 per violation for violations of RSA 147-A or rules adopted pursuant thereto. Pursuant to this section, the Commissioner has adopted Env-C 612 to establish the schedule of fines for such violations.
3. RSA 147-A:6, I, states "Any transporter of hazardous waste within the state shall annually register with [DES] using forms provided by [DES] before engaging in the transportation of hazardous wastes."
4. RSA 147-A:6, III, states "The registration period shall be from July 1, of a given year, to June 30, of the following year."

5. On May 23, 1997, Wood contacted the Division to obtain a New Hampshire Hazardous Waste Transporter Registration Application ("Application")
6. On May 23, 1997, the Division mailed an Application to Wood as well as copies of the Hazardous Waste Rules regarding hazardous waste transportation and used oil management.
7. On March 29, 2004, the Division received New Hampshire manifest number NHH0061048, dated February 24, 2004 submitted by a New Hampshire hazardous waste generator. The manifest lists Wood as the hazardous waste transporter.
8. On March 29, 2004, Wood faxed the Application to the Division.
9. On February 24, 2004, when Wood picked up and transported hazardous waste from a New Hampshire hazardous waste generator, Wood was not a registered hazardous waste transporter in New Hampshire.

IV. VIOLATIONS ALLEGED

1. Wood has violated RSA 147-A:6, I by failing to obtain a New Hampshire Hazardous Waste Transporter Registration prior to transporting hazardous waste within the State of New Hampshire.

V. PROPOSED ADMINISTRATIVE FINES

1. For the violation identified in IV.1, above, Env-C 612.02(d) specifies a fine of \$2,000 per load transported without being registered. For the violation noted above, the Division is seeking a total fine of \$2,000.

The total fine being sought is \$2,000.

V. REQUIRED RESPONSE, OPPORTUNITY FOR HEARING

Wood has the right to a hearing to contest the Division's allegations before the fine is imposed. A hearing on this matter has been scheduled for **Monday, June 28, 2004**, at 2:30 p.m. in **Room C-110** of the DES offices at **29 Hazen Drive** in Concord, NH. **Pursuant to Env-C 601.06, Wood is required to respond to this notice.** Please respond **no later than May 28, 2004**, using the enclosed colored form as follows:

1. If Wood plans to attend the hearing, please sign the appearance (upper portion) and return it to the DES Legal Unit, as noted on the form.
2. If Wood chooses to waive the hearing and pay the proposed fine, please sign the waiver (lower portion) and return it **with payment of the fine** to the DES Legal Unit.
3. If Wood wishes to discuss the possibility of settling the case, please sign the appearance and return it to the DES Legal Unit **and** call the DES Legal Unit to indicate Wood's interest in settling.

Wood is not required to be represented by an attorney. If Wood chooses to be represented by an attorney, the attorney must file an appearance and, if a hearing is held, submit proposed findings of fact to the person conducting the hearing.

If Wood wishes to have a hearing but are unable to attend as scheduled, Wood must notify the DES Legal Unit at least one week in advance of the hearing and request that the hearing be rescheduled. If Wood does not notify the DES Legal Unit in advance and do not attend the hearing, the hearing will be conducted in Wood's absence in accordance with Env C 204.09.

VI. DETERMINATION OF LIABILITY FOR ADMINISTRATIVE FINES

Pursuant to Env-C 601.09, in order for any fine to be imposed after a hearing, the Division must prove, by a preponderance of the evidence, that Wood committed the violations alleged and that the total amount of fines sought is the appropriate amount under the applicable statute and rules. Proving something by a preponderance of the evidence means that it is **more likely than not** that the thing sought to be proved is true.

If the Division proves that Wood committed the violations and that the total amount of fines sought is the appropriate amount under the applicable statute and rules, then the fine sought will be imposed, subject to the following:

* Pursuant to Env-C 601.09(c), the fine will be **reduced by 10%** for each of the circumstances listed below **that Wood proves, by a preponderance of the evidence,** applies in this case:


1. The violation was a one-time or non-continuing violation, **and** Wood did not know about the requirement when the violation occurred, **and** the violation has not continued or reoccurred as of the time of the hearing, **and** any environmental harm or threat of harm has been corrected, **and** Wood did not benefit financially, whether directly or indirectly, from the violation.
2. At the time the violation was committed, Wood was making a good faith effort to comply with the requirement that was violated.
3. Wood has no history of non-compliance with the statutes or rules implemented by DES or with any permit issued by DES or contract entered into with DES.
4. Other information exists which is favorable to Wood's case which was not known to the Division at the time the fine was proposed.

*******IMPORTANT NOTICE*******

An administrative fine hearing is a formal hearing. Any hearing will be tape recorded, and all witnesses will testify under oath or affirmation. At the hearing, the Division will present testimony and evidence to try to prove that Robbie D. Wood, Inc. committed the violation(s) alleged above and that the fine(s) should be imposed. **The hearing is Wood's opportunity to present testimony and evidence that Wood did not commit the violation(s) and/or that the fine(s) should not be imposed, or that the fine(s) sought should be reduced.** If Wood has any evidence, such as photographs, business records or other documents, that believes show that Wood did not commit the violation(s) or that otherwise support Wood's position, Wood should bring the evidence to the hearing. Wood may also bring witnesses (other people) to the hearing to testify on Wood's behalf.

If Wood wishes to have an informal meeting to discuss the issues, Wood must contact the DES Legal Unit at (603) 271-6072 to request a prehearing conference.

Information regarding this proposed fine may be made available to the public via the DES Web page (www.state.nh.us.des). If Wood has any questions about this matter, please contact the DES Legal Unit, at (603) 271-6072.

For  **COPY**
Anthony P. Giunta, J.G. Director
DES Waste Management Division

Enclosure (NHDES Fact Sheet #CO-2002)

cc: Mark Harbaugh, DES Legal Unit
Michael J. Walls, Assistant Commissioner, DES
Jennifer J. Patterson, Sr. Asst. Attorney General, NHDOJ/EPB
Carl Woodbury, Supervisor, SIS
Public Information Officer, DES PIP Office

*** RETURN THIS PAGE ONLY ***

ROBBIE D. WOOD, INC. IS REQUIRED BY LAW TO RESPOND TO THIS NOTICE.

PLEASE RESPOND NO LATER THAN May 28, 2004

APPEARANCE On behalf of Robbie D. Wood, Inc.

_____ I will attend the hearing scheduled for Monday, June 28, 2004, at 2:30 p.m. in Room C-110 of the DES offices at 29 Hazen Drive in Concord, NH.

Signature

Date

Name (please print or type): _____

Title: _____

Phone Number: _____

WAIVER OF HEARING On behalf of Robbie D. Wood, Inc.

_____ I certify that I understand my right to a hearing regarding the imposition of the proposed administrative fine and that I hereby waive those rights. The fine payment in the amount of \$2,000 paid to "Treasurer, State of New Hampshire" is enclosed.*

** If payment is made by check, draft, or money order that is returned due to insufficient funds, pursuant to NH RSA 6:11-a, DES may charge a fee in the amount of 5% of the face amount of the original check draft, or money order or \$25.00, whichever is greater, plus all protest and bank fees, in addition to collecting the amount of the original check draft, or money order.*

Pursuant to Env-C 203.05 please provide the following information:

Signature

Date

Name (please print or type): _____

Title: _____

Phone Number: _____

RETURN THIS PAGE ONLY TO:

Michael Sclafani, Legal Assistant

Department of Environmental Services ~ Legal Unit

29 Hazen Drive, P.O. Box 95

Concord, NH 03302-0095

ENVIRONMENTAL Fact Sheet



6 Hazen Drive, Concord, New Hampshire 03301 • (603) 271-3503 • www.des.state.nh.us

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Administrative Fines of the Department of Environmental Services

The Commissioner of the Department of Environmental Services (DES) is authorized by several statutes to impose administrative fines for certain violations of those statutes. In order to implement this authority, the Commissioner has adopted rules which specify the procedures for notifying people that a fine is being proposed and which specify the fine amount for any given violation. These rules are identified as Chapter Env-C 600.

Administrative fine proceedings follow a defined path. The first step is for a Division of DES to issue a Notice of Proposed Fine. The Notice will inform you of the violations the Division believes you have committed, together with the dollar amount of the fine that is being proposed. At this point, a final decision as to whether to impose the fine **has not been made** ... the Notice simply initiates the proceeding. The Notice will also inform you that you have a right to have a hearing before a final decision will be made, and may give a date and time for the hearing.

The Notice you receive will have a page attached to it on which you can indicate whether you will attend a hearing or whether you are waiving your right to a hearing and paying the fine which has been proposed. **YOU MUST COMPLETE AND RETURN THIS FORM.** The worst thing you can do if you receive a Notice is to ignore it! Under the rules which have been adopted, the case can proceed even if you don't respond. In order to achieve the best result, you must participate in the process.

When you receive a Notice of Proposed Fine, if you are interested in trying to settle the case without going to a formal hearing you should contact the person identified in the Notice. Many fine cases are settled in this way, often with a lower fine, a payment schedule, and/or a suspended fine. The negotiations need to start soon after the Notice is received, though. Don't wait until the day scheduled for the hearing to ask about settling the case.

If the case proceeds to a hearing, the Commissioner will designate a person to serve as a hearing officer to preside at the formal hearing. The hearing officer will not have prior knowledge of the Division's allegations, and will be neutral insofar as the outcome of the case is concerned. At the hearing, the Division will be required to prove that the violation(s) occurred and that the proposed fine is warranted. You will have an opportunity to ask questions of (cross-examine) the Division staff, and also present your own evidence, including testimony of witnesses if you wish, to show why the fine should not be imposed.

(over)

After the hearing is over, the hearing officer will compile the record (i.e. all of the information that was received at the hearing) and will make a recommendation to the Commissioner as to whether or not the fine should be imposed. The Commissioner will make a decision based on the evidence and testimony, and the decision issued by the Commissioner will specifically state the reasons for the decision.

The rules adopted by the Commissioner require the proposed fine to be reduced in certain circumstances, which are listed at Env-C 601.09. These include that you have not previously violated a law or rule implemented by DES, or that you acted in good faith. The Commissioner also has the discretion to allow you to pay a fine on a payment schedule, and/or to suspend all or a portion of the fine conditional upon remedying the underlying violation or staying in compliance with DES requirements for a specified period of time.

Sometimes people are concerned that the findings and rulings made by the Commissioner might be used against them in a separate proceeding (for instance, if their neighbor sues them for damages arising out of the same violation(s) for which they are being fined). In such a case, DES has accepted payment of the fine with a specific denial of liability. This is like pleading "no contest" to a traffic ticket: you pay the fine assessed, but are not admitting that you did anything wrong.

This fact sheet is intended as a basic source of information concerning DES administrative fines. It is not intended to replace the laws and rules regarding administrative fines, but merely to provide a summary of them.

For more information contact the DES Legal Unit, PO Box 95, Concord, NH 03302-0095, (603) 271-6072.